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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1104

THE HOOPA VALLEY TRIBE, *Petitioner,*

vs.

JESSIE SHORT, et al., and THE UNITED STATES,
Respondents.

OBJECTION OF RESPONDENTS JESSIE SHORT ET AL. TO MOTIONS FOR LEAVE TO FILE AMICUS BRIEFS OR STATEMENTS IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS FILED BY:

Colville Confederated Tribes of the Colville Indian Reservation, Washington;

The Colorado River Indian Tribes;

National Tribal Chairmen's Association;

National Congress of American Indians;

Assiniboine and Sioux Tribes of Fort Peck Indian Reservation, Montana; Shoshone Tribe of Wind River Reservation, Wyoming; and Standing Rock Sioux Tribe of Standing Rock Reservation, North Dakota and South Dakota;

The Fort Mojave Indian Tribes of Arizona, California, and Nevada; The Cortina Rancheria of California; The Stewart's Point Rancheria (Kashia Band) of California; The Los Coyotes Reservation of California; The Pauma Reservation of California; The Covelo Indian Community (Round Valley) of California; The Colorado River Indian Tribes of Arizona, and the California Tribal Chairmen's Association;

The Quinault Tribe of Indians of the Quinault Reservation, Washington.

Respondents, Jessie Short et al., have previously filed their objection to a motion by the Salt River

Pima-Maricopa Indian Community of Arizona for leave to file a statement amicus. Respondents entered such objection because the motion failed to demonstrate any interest of the Salt River Pima-Maricopa Indian Community which would be in any manner adversely affected by the decision of the Court of Claims in the present case.

The seven subsequently filed motions seeking leave to file amicus briefs or statements in support of the petition of the Hoopa Valley Tribe for certiorari similarly fail to show that any interest of the moving parties would be threatened by the Court of Claims' decision.

None of the moving parties even sought the consent of respondents to the filing of the proposed briefs or statements. All of the motions and the proposed briefs or statements have such a distinctly partisan flavor that it is evident they have been presented with the view of promoting the interests of the organization of Indians known as the Hoopa Valley Tribe rather than for the purpose of protecting any legitimate interest of the moving parties or of providing assistance to this Court.

All of the motions but one totally ignore Rule 42 of this Court requiring that such motions set forth facts or questions of law that have not been presented by the parties or reasons for believing that any facts or questions of law will not be adequately presented by the parties. The motion of the Colorado River Indian Tribes makes a brief reference to this require-

ment at page 3, but does not purport to set forth any facts or questions of law that have not been presented by the parties, and gives no specific reasons for believing that any facts or questions of law will not be adequately presented by the parties.

All of the motions and the proposed briefs or statements exhibit such a total misconception of the opinion and findings of the Court of Claims that it does not appear that they could be based upon any real analysis or even consideration of the opinion and findings of that Court.

All of the motions make the same principal and misconceived assertion that the Court of Claims has improperly interfered with the autonomy of an Indian tribe and its right of self-government and has exercised the power primarily vested in the Congress to determine tribal membership for the purpose of the distribution of tribal assets. Yet it is readily apparent that the decision of the Court of Claims does not deprive any Indian tribe of its autonomy nor establish criteria for enrollment therein. Assuming that the conglomerate group of Indians organized in 1950 under the name "Hoopa Valley Tribe" has the legal status of an "Indian tribe," the decision of the Court of Claims does not require this organization to alter its membership criteria nor does the Court's decision in any other way interfere with its autonomy and right of self-government. The Court of Claims has ruled only that the members of this group cannot have the exclusive benefit of the major portion of

the common lands of a multi-tribal reservation in which other Indians are entitled to share equally.

In making this ruling, the Court of Claims has exercised the necessary and proper judicial function of determining what Indians are entitled to share equally in the benefits of the Hoopa Valley Reservation pursuant to the Congressional mandate in the Act of April 8, 1864, 13 Stat. 39, and the implementing Executive Orders of 1876 and 1891. *Cf. Halbert v. United States*, 283 U.S. 753 (1931); *The Quinaielt Tribe v. United States*, 102 Ct. Cl. 822 (1945) and *Healing v. Jones*, 210 F. Supp. 125 (D. Ariz. 1962), aff'd 373 U.S. 758 (1963). The decision of the Court of Claims does not infringe upon the authority of Congress, but rather recognizes and protects Congressional authority, by holding invalid arbitrary administrative action which ignored the Congressional purpose in enacting the Act of April 8, 1864 as well as the intent of the implementing Executive Orders.

The joint motion and proposed amicus brief of The Fort Mojave Indian Tribes and several other Indian groups, asserts that the Court of Claims, in arriving at its decision, failed to consider the doctrine that Indian title can be acquired by bare Executive Order followed by continued governmental recognition, and consequently endangers Indian title based on such doctrine. However, the decision of the Court of Claims is not the result of disregard of such doctrine, but rather is based upon findings which make the doctrine inapplicable.

The Hoopa Valley Reservation was not established by a bare Executive Order, but was established by Executive Orders implementing an Act of Congress authorizing the establishment of such Reservation. The Court of Claims found that this Act of Congress and the implementing Executive Orders were intended to vest in all of the Indians accommodated on such Reservation an equal right to its benefits and not to vest the exclusive right to the major portion of the Reservation either in the members of the organization known as the Hoopa Valley Tribe or in the members of the ethnic, group, the Hoopa Tribe.

CONCLUSION

For the reasons stated, all of the motions for leave to file amicus statements or briefs in support of the Petition of the Hoopa Valley Tribe for a Writ of Certiorari to the Court of Claims should be denied.

Respectfully submitted,

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March, 1974